BRB No. 08-0284

M.T.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ISLAND OPERATING COMPANY, INCORPORATED	)	DATE ISSUED: 12/16/2008
	)	
and	)	
	)	
LOUISIANA WORKERS' COMPENSATION CORPORATION	)	
	)	
Employer/Carrier-Respondents	)	ORDER on RECONSIDERATION

Employer has filed a timely motion for reconsideration of the Board's decision in the captioned case, *M.T. v. Island Operating Co., Inc.*, BRB No. 08-0284 (Sept. 25, 2008)(unpub.). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407(a). This decision reversed the administrative law judge's finding that the Section 20(a) presumption was rebutted, held that claimant's knee condition is work-related as a matter of law, and remanded the case for the administrative law judge to address any remaining issues.

On reconsideration, employer contends that the Board impermissibly exceeded its scope of review and fabricated a stricter evidentiary standard for rebuttal than that stated in *Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 37 BRBS 35(CRT) (5th Cir. 2003), *cert. denied*, 540 U.S. 1056 (2003). After consideration of employer's contentions and review of the Board's disposition of the case, we deny employer's motion for reconsideration.

Contrary to employer's contentions, the Board applied the proper rebuttal standard. While, as employer argues, it cannot be made to rule out every conceivable connection between claimant's injury and his work in order to rebut the Section 20(a) presumption, employer must produce substantial evidence that the injury is not work-related. *Charpentier*, 332 F.3 282, 37 BRBS 35(CRT). Moreover, in a case such as this where claimant has a pre-existing condition, employer must produce substantial evidence

that claimant's work injury did not aggravate claimant's underlying condition. *Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999). In this case, the Board held that employer produced no evidence that the work incident did not aggravate or render symptomatic claimant's underlying condition, and employer does not aver on reconsideration that any evidence it produced is sufficient to do so.

Because employer failed to present any evidence that would support rebuttal of the Section 20(a) presumption, the Board neither reweighed nor re-evaluated the evidence that claimant's underlying condition was not aggravated by the work incident. Thus, the Board did not usurp the administrative law judge's factfinding authority as the finding that employer's evidence is not, as a matter of law sufficient to rebut the Section 20(a) presumption, is a legal determination. *Bath Iron Works Corp. v. Preston*, 380 F.3d 597, 38 BRBS 60(CRT) (1st Cir. 2004) (holding that the Board can determine if evidence is legally sufficient to establish rebuttal). We, therefore, reject employer's contentions of error.

Accordingly, employer's motion for reconsideration is denied and the Board's decision is affirmed. 20 C.F.R. §802.409.

SO ORDERED.

_____
NANCY S. DOLDER, Chief
Administrative Appeals Judge

_____
ROY P. SMITH
Administrative Appeals Judge

_____
BETTY JEAN HALL
Administrative Appeals Judge